

COMMISSION LEGAL ISSUES
NEW ENGLAND GAS COMPANY
DOCKET NO. 3438

Question No. 1:

Please advise the Commission as to the status of Case No. PC2002-2329. It is unclear whether the Temporary Restraining Order was made effective for ten (10) days under RI RCP 65 or until further order of the court. Therefore, please provide the Commission with a copy of Judge Fortunato's Written Order (See page 66 of the transcript).

Answer:

Case No. PC2002-2329 was dismissed by Judge Fortunato effective May 30, 2002. All previous orders of the Court, including Judge Fortunato's May 21, 2002 Temporary Restraining Order, were vacated, and thus rendered null and void, by Judge Fortunato in the May 30, 2002 Dismissal Stipulation. A copy of the May 21, 2002 Order and May 30, 2002 Stipulation of Dismissal are attached.

Prepared by or under the supervision of Craig L. Eaton.

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Question No. 2:

Please explain the application of R.I.G.L. §§ 28-27-28, 28-27-29 to New England Gas Company employees who terminate, restore or activate service or who test meters.

Answer:

Chapter 28-27 of the Rhode Island General Laws does not apply to the employees in question.

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Question No. 3:

Please explain the interplay between R.I.G.L. §§28-27-28, 28-27-29 and the recently enacted R.I.G.L. §39-2-23. Are they in conflict with one another? If a conflict does exist, which statute controls and why?

Answer:

There is no interplay between §39-2-23 and §§28-27-28 and 28-27-29. Chapter 28-27 of the Rhode Island General Laws does not apply to employees who are covered by Rhode Island General Laws §39-2-23. Thus there is no conflict between the statutes and one does not control over the other.

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Question No. 4:

Please address whether or not Judge Fortunato's decision of May 15, 2002 in PC2002-2329 to require gas workers to be licensed affects the "certification" language in R.I.G.L. §39-3-23. In other words, does Judge Fortunato's interpretation of R.I.G.L. §§28-27-28, 28-27-29 require the Commission to mandate New England Gas Company employees engaged in the termination, restoration or activation of gas service or to test meters to be licensed?

Answer:

Judge Fortunato did not rule on the merits of the Complaint brought by the Attorney General and the Department of Labor and Training. Judge Fortunato merely granted a temporary restraining order ("TRO") regarding licensing until the merits could be addressed. Before the merits could be addressed in further proceedings, the case was dismissed as referred to in #1 above and the TRO was vacated. Judge Fortunato's decision to grant a TRO has absolutely no further precedential effect.

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Question No. 5:

Since Judge Fortunato's decision in Case No. PC2002-2329 was made the day before R.I.G.L. § 39-2-23 was enacted, does the statute supersede the court's decision/interpretation of R.I.G.L. §28-27-29?

Answer:

As discussed in #4 above, the granting of a temporary restraining order has no further precedential effect on the merits of the issue. R.I.G.L. §39-2-23 stands on its own.

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